

Title	Appellate Procedure: Requirement For Service of Briefs or Petitions on the Attorney General and Other Public Officers (adopt Cal. Rules of Court, rule 44.5, amend rules 14(b), 15, 28(f)(3), and 56(k) and revise form APP-001)
Summary	In response to recent legislation expanding the types of cases in which appellate briefs or petitions must be served on the Attorney General and other public officers, new rule 44.5 would establish general provisions concerning these service requirements. The current provisions in rules 14, 15, 28, and 56 and form APP-001 that refer to these service requirements only in unfair competition cases would be amended or deleted in light of the new rule.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Proposed New Rule 44.5 and Amendments to Rules 15(e), 14(b), 28(f)(3) and 56(k)</u></p> <p>Currently, rule 15(e), which applies only in Court of Appeal matters, addresses the circumstances in which a copy of an appellate brief must be served on the Attorney General. In addition to listing the general circumstances requiring this service, such as criminal cases or cases in which the state is named as a party, this rule incorporates, in paragraph (2), a statutory requirement for service on the Attorney General and the district attorney in unfair competition cases:</p> <p style="padding-left: 40px;">(2) In an unfair competition proceeding to which Business and Professions Code section 17209 applies, each brief must be served on the Attorney General and on the district attorney of the county in which the action was filed. The brief must be served within three days of its filing, unless the presiding justice extends that period for good cause.</p> <p>Related provisions regarding service of briefs and writ petitions on the Attorney General also appear in rules 14(b), 28(f)(3), and 56(k).</p> <p>In 2001, the Legislature enacted another statutory provision, Government Code section 12656, requiring service on the Attorney General in qui tam actions under the False Claims Act. In 2002, additional legislation was enacted requiring service on the Attorney General in still other circumstances (see Stats. 2002, ch. 244). In light of these new statutory requirements, the Appellate Advisory</p>

Committee is proposing the adoption of new rule 44.5, which takes a more general approach to addressing these statutory service requirements. Rather than having the rule simply repeat specific statutory requirements for service on the Attorney General, proposed rule 44.5 would specify the procedures that must be followed when service on the Attorney General or another public officer is required by any statute. This general approach would eliminate the need to update the rules each time a new statute requiring service on a public official is adopted. New rule 44.5, which would apply to both Supreme Court and Court of Appeal matters, would also incorporate current rule 15(e)'s the requirements concerning general classes of cases in which service on the Attorney General is required as well as the requirements in current rules 14(b) and 56(k) concerning identification of applicable service requirements on the cover of a petition or brief. In addition, a new requirement would be added for service on the Attorney General when a petition questions the constitutionality of a state statute.

In conjunction with new rule 44.5, the committee is proposing that rules 14(b), 15, 28(c), and 56(k) be amended. All of the specific provisions relating to service on the Attorney General would be deleted from rule 15 and replaced with a cross-reference to new rule 44.5. With these amendments, the remainder of the service-related provisions of rule 15 could be consolidated into a single subdivision. The cross-reference in rule 28(f) would also be corrected and subdivisions 14(b)(10)(F) and 56(k) would be deleted. (Note that the committee is recommending a separate amendment to rule 56(i), which is described in Invitation to Comment SPR03-07.)

Proposed Revisions to Form APP-001

Judicial Council form APP-001, the *Civil Case Information Statement*, which appellants must file with the Court of Appeal shortly after filing their notice of appeal, currently includes, among other things, a box for appellants to check if the case involves an unfair competition action under Business and Professions Code section 17200 et seq. The form then refers appellants to rule 15(e). This provision helps alert parties and the clerk if the special service requirements relating to unfair competition cases apply to the case. The committee proposes broadening this portion of the form to include check boxes for all the statutory provisions that specifically require service of appellate petitions or briefs on the Attorney General or other public officers (See Part I, item F.)

Attachments

Effective January 1, 2004, rule 44.5 of the California Rules of Court would be adopted, rules 14(b), 15, 28(f)(3), and 56(k) would be amended, and form APP-001 would be revised to read:

Rule 44.5 Service on Public Officer or Agency

(a) Service on the Attorney General In addition to any statutory requirements for service of briefs on public officers or agencies, a party must serve its brief or petition on the Attorney General if the brief or petition:

(1) questions the constitutionality of a state statute, or

(2) is filed on behalf of the State of California, a county, or an officer whom the Attorney General may lawfully represent in:

(A) a criminal case,

(B) a case in which the state or a state officer in his or her official capacity is a party, and

(C) a case in which a county is a party, unless the county's interest conflicts with that of the state or a state officer in his or her official capacity.

(b) Proof of service When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the party must file proof of such service with the document unless a statute permits service after the document is filed, in which case the proof of service must be filed immediately after the document is served on the public officer or agency.

(c) Identification on cover When a statute or this rule requires a party to serve any document on a non-party public officer or agency, the cover of the document must contain a statement that identifies the statute or rule requiring service of the document on the public officer or agency in substantially the following form: "Service on *[insert name of the officer or agency]* required by *[insert citation to the statute or rule]*."

Rule 14. Contents and form of briefs

(a) ***

(b) Form

1
2 (1)–(9) ***

3
4 (10) The cover, preferably of recycled stock, must be in the color
5 prescribed by rule 44(c) and must state:

6
7 (A)–(E) ***

8
9 ~~(F) in an unfair competition proceeding to which Business and~~
10 ~~Professions Code section 17209 applies, the following notice:~~
11 ~~"Unfair competition case. (See Bus. & Prof. Code, § 17209, and~~
12 ~~Cal. Rules of Court, rule 15(e)(2).)"~~

13
14 **Rule 15. Service and filing of briefs**

15
16 (a)–(b) ***

17
18 **(c) Service on superior court clerk**

19
20 (1) A copy of each brief must be served on the superior court clerk for
21 delivery to the trial judge.

22
23 ~~(d) Service on Supreme Court~~ (2) Five copies of each brief filed in a civil
24 appeal must be served on the Supreme Court.

25
26 (3) A copy of each brief must be served on a public officer or agency when
27 required by statute or rule 44.5.

28
29 ~~(e) Service on Attorney General and district attorney~~

30
31 ~~(1) A brief for the State of California, a county, or an officer whom the~~
32 ~~Attorney General may lawfully represent must be served on the Attorney~~
33 ~~General:~~

34
35 ~~(A) in all criminal cases;~~

36
37 ~~(B) in all cases in which the state or a state officer in his or her official~~
38 ~~capacity is a party; and~~

39
40 ~~(C) in all cases in which a county is a party, unless the county's interest~~
41 ~~conflicts with that of the state or a state officer in his or her official~~
42 ~~capacity.~~

1
2 ~~(2) In an unfair competition proceeding to which Business and Professions~~
3 ~~Code section 17209 applies, each brief must be served on the Attorney~~
4 ~~General and on the district attorney of the county in which the action was~~
5 ~~filed. The brief must be served within three days of its filing, unless the~~
6 ~~presiding justice extends that period for good cause.~~

7
8 **Rule 28. Petition for review**

9
10 **(a)–(e) ******

11
12 **(f) Additional requirements**

13
14 **(1)–(2) *****

15
16 ~~(3) In an unfair competition proceeding to which Business and Professions~~
17 ~~Code section 17209 applies, the petition must also be served as required by~~
18 ~~rule 15(e)(2). A copy of each brief must be served on a public officer or~~
19 ~~agency when required by rule 44.5.~~

20
21 **(g) *****

22
23 **Rule 56. Original proceedings**

24
25 **(a)–(j) *****

26
27 ~~**(k) [Unfair competition cases]** In an unfair competition proceeding under~~
28 ~~Business and Professions Code section 17200 et seq., each brief and each~~
29 ~~petition shall contain the following statement on the front cover: "Unfair~~
30 ~~competition case. (See Bus. & Prof. Code, § 17209 and Cal. Rules of Court,~~
31 ~~rule 15(e)(2).)"~~
32

CIVIL CASE INFORMATION STATEMENT		Court of Appeal Case Number (if known):
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____		FOR COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): _____		
TELEPHONE NO.: _____ E-MAIL ADDRESS (Optional): _____ FAX NO. (Optional): _____ ATTORNEY FOR (Name): _____		
APPELLANT: RESPONDENT:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
JUDGES (all who participated in case):		Superior Court Case Number:
<p>NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 2(c) for definition of "entered"), and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2), or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).</p>		

PART I – APPEAL INFORMATION**A. APPEALABILITY**

1. Appeal is from:

- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code Civ. Proc., §§ 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code Civ. Proc., § 904.1(a)(2)
☐ An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
☐ Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

☐ Yes ☐ No

If not, please explain why the judgment is appealable:

B. TIMELINESS OF APPEAL (Provide all applicable dates.)

1. Date of entry of judgment or order appealed from: ____/____/____
2. Date that notice of entry of judgment or a copy of the judgment was mailed by the clerk or served by a party under Cal. Rules of Court, rule 2: ____/____/____
3. Was a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment made and denied?
☐ Yes ☐ No If yes, please specify the type of motion:

Date motion filed: ____/____/____ Date denied: ____/____/____ Date denial served: ____/____/____

4. Date notice of ☐ appeal or ☐ cross-appeal filed: ____/____/____

APPELLATE CASE TITLE: 	SUPERIOR COURT CASE NUMBER:
-------------------------------	-------------------------------------

C. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment I.C.)*

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court? ☐ Yes ☐ No

If yes, insert name of appellate court:

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

D. BANKRUPTCY OR OTHER STAY

☐ Related bankruptcy case or a court-ordered stay affects this appeal. *(Attach a copy of the petition [without attachments] and any stay order.)*

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a brief or a petition, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 44.5 or a statute?

☐ Yes ☐ No

by the following rule or statute *(please check all that apply)*:

☐ Rule 44.5(a)

☐ Bus. & Prof. Code, § 17209 (Unfair Competition Act)

☐ Bus. & Prof. Code, § 17536.5 (False advertising)

☐ Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)

☐ Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)

☐ Gov. Code, § 4461 (Disabled access to public buildings)

☐ Gov. Code, § 12656(a) (False Claims Act)

☐ Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)

☐ Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)

☐ Other *(please specify statute)*:

NOTE: The rule and statutory provisions listed above require service of a copy of a party's brief or petition and brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply. (See, e.g., Code Civ. Proc., § 1355; Gov. Code, § 946.6(d); Pub. Resources Code, § 21167.7.)

PART II – NATURE OF ACTION

A. Nature of action *(check all that apply)*:

1. ☐ Conservatorship

2. ☐ Contract

3. ☐ Eminent domain

4. ☐ Equitable action

a. ☐ Declaratory relief

b. ☐ Other *(describe)*:

APPELLATE CASE TITLE: 	SUPERIOR COURT CASE NUMBER:
-------------------------------	-------------------------------------

- 5. ☐ Family law
- 6. ☐ Guardianship
- 7. ☐ Probate
- 8. ☐ Real property rights
 - a. ☐ Title of real property
 - b. ☐ Other (*describe*):

- 9. ☐ Tort
 - a. ☐ Medical malpractice
 - b. ☐ Product liability
 - c. ☐ Other personal injury
 - d. ☐ Personal property
 - e. ☐ Other tort (*describe*):

- 10. ☐ Trust proceedings
- 11. ☐ Writ proceedings in superior court
 - a. ☐ Mandate (Code Civ. Proc., § 1085)
 - b. ☐ Administrative mandate (Code Civ. Proc., § 1094.5)
 - c. ☐ Prohibition (Code Civ. Proc., § 1102)
 - d. ☐ Other (*describe*):

- 12. ☐ Other action (*describe*):

B. ☐ This appeal is entitled to calendar preference/priority on appeal (*cite authority*):

PART III – PARTY AND ATTORNEY INFORMATION

Please attach to this form a list of all the parties and all their attorneys of record who will participate in the appeal. For the parties, include the following information: the party's name and his or her designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, include the following information: name, state bar number, mailing address, telephone number, fax number, and e-mail address.

Date:

This statement is prepared and submitted by:



(SIGNATURE OF ATTORNEY OR UNREPRESENTED PARTY)